

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

| | | |
|----------------------------|---|--------------------|
| Notice of Price Adjustment |) | |
| |) | Docket No. R2012-6 |
| |) | |

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS ON THE UNITED STATES POSTAL SERVICE
NOTICE OF MARKET-DOMINANT PRICE ADJUSTMENT
(March 12, 2012)**

BACKGROUND

On February 21, 2012, the U.S. Postal Service filed a Notice of Market-Dominant Price Adjustment ("Postal Service Notice") with the Postal Regulatory Commission pursuant to the Postal Accountability and Enhancement Act ("PAEA"), Public Law 109-435 (*see* 39 U.S.C. § 3622), and the Commission's rules promulgated thereunder (*see* 39 C.F.R. §§ 3010.1, *et seq.*). The change being noticed is a 2 percent discount for First-Class Mail and Standard Mail letters, flats, and cards that include a two-dimensional, mobile barcode in or on the mailpiece.

On February 22, 2012, the Commission issued Order No. 1252 opening this docket and setting March 12, 2012 as the deadline for public comment. These comments are filed jointly on behalf of Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. (hereinafter "Valpak"). As permitted by Rule 3010.13(b), these comments focus on compliance of noticed prices with the requirements and policies of Title 39.

On March 2, 2012, the Chairman issued Chairman's Information Request ("ChIR") No. 1, asking important questions related to the inclusion of Standard Mail Flats in the proposed discount. On March 8, 2012, the Postal Service responded to ChIR No. 1.

COMMENTS

Just as the question of including underwater Standard Mail Flats in last year's mobile barcode discount docket, Docket No. R2011-5, was an issue, it is also an issue in this docket. Consistent with its opposition last year, Valpak also opposes extension of the 2012 mobile barcode discount program to Standard Mail Flats this year.

And Valpak believes there is an important connection between this docket and the continuing problem now being considered in Docket No. ACR2011 — Standard Mail Flats shortfall and subsidy by other Standard Mail products. In Docket No. ACR2010, Valpak addressed the failure of Standard Mail Flats to cover its attributable costs. *See* Docket No. ACR2010, Valpak Initial Comments, pp. 40-49; Valpak Reply Comments, pp. 2-12. Other parties did so as well. *See, e.g.*, Comments of L.L. Bean.

By way of review, in its FY 2010 Annual Compliance Determination, the Commission recognized its responsibility to act, and made its first-ever finding of noncompliance under the Postal Accountability and Enhancement Act ("PAEA"), finding that pricing for Standard Flats violated 39 U.S.C. section 101(d). *See* FY 2010 Annual Compliance Determination, p. 106. As a corrective action, the Commission ordered the Postal Service to provide a plan for future above-average (albeit below the class-wide cap) pricing increases:

Pursuant to section 3653(c), the Commission directs the Postal Service to increase the cost coverage of the Standard Mail Flats product through a combination of above-average price

adjustments, consistent with the price cap requirements, and cost reductions until such time that the revenues for this product exceed attributable costs. [*Id.*]

Within 90 days of the issuance of the FY 2010 ACD, the Postal Service shall present a schedule of future above-CPI price increases for Standard Mail Flats. [*Id.*, p. 107.]

An appeal from that earlier ACD is now pending in the U.S. Court of Appeals for the D.C. Circuit, with oral argument having occurred in February 2012. The Postal Service submitted its next Annual Compliance Report for FY 2011 in December 2011, reporting another massive \$652 million loss on Standard Mail Flats.

The Postal Service addressed the problem of Standard Mail Flats in its Notice in this docket, stating that, “Since the 2012 Promotion encourages future revenue growth in Standard Mail Flats and other products by improving the **long-term value** of direct mail to advertisers, the Postal Service believes that the 2012 Promotion complies with the Commission’s directive” in the FY 2010 ACD. Postal Service Notice, p. 8 (emphasis added). The Postal Service’s current position should be compared with the Commission’s Order approving the 2011 mobile barcode discount, where the Commission explained its decision as follows:

The Commission’s decision not to eliminate Standard Flats from the promotion is strongly influenced by the program’s relatively **short duration**. The promotion may inform the Postal Service’s **long-term plans**. This potential benefit outweighs any short-term considerations related to the promotion. To bring Standard Flats into compliance, the Postal Service must exercise its flexibility and innovation in pricing and cost control.

It is imperative that the Postal Service develop and implement a **long-term solution** to this **persistent issue**. The instant proposal can be characterized as a step in that process. The Commission will permit the Postal Service to explore an innovation that may assist the **long-term solution** to the problems

facing the Standard Mail Flats product. [Order No. 731, p. 11 (emphasis added).]

The Chairman followed up on its previously articulated concerns and directives when it issued ChIR No. 1 in the present docket. Question 4 asked whether the 2011 discount program did, in fact, assist “the Postal Service in developing a **long-term solution** to the insufficient cost coverage of Standard Mail Flats, and if so how.” (Emphasis added.) The Postal Service response largely ignored the question and leaned on the weak reed of “promoting awareness of how mobile technology could be integrated into mailing campaigns.”

Unfortunately, the issue in this docket is whether the Postal Service should be allowed to encourage **long-term growth** of a product that is **deeply underwater**, and for which the Postal Service has **no plan** (and seemingly no interest in having a plan) in place to have the Standard Flat product start contributing to institutional costs in the long run — much less within the next 12 months. The Postal Service confirmed that its flawed goal was to increase total revenues, **not cost coverage**, in response to ChIR No. 1, question 4.

The Postal Service Notice states that “the Postal Service does not believe that, by directing the Postal Service toward the goal of higher cost coverage for flats, the Commission intended to stifle all attempts to adopt innovations that would promote the goal of higher flats **revenues** in the long run.” Postal Service Notice, p. 8 (emphasis added). The Postal Service does not seem to understand that, when revenues of a product fail to cover attributable costs, higher volumes (and gross revenues) from that product are not desirable. Businesses focus on **net** revenues, not **gross** revenues. More pieces only add to immediate losses and, if long run growth is encouraged, they also add to long-run losses. There is absolutely no reason for the

Commission to assume unit costs will shrink for Standard Flats. Nothing about the Postal Service's discount proposal contributes to cost control or in any way helps solve the cost coverage problem.

One of the possible bases for the Commission's approval of including Standard Mail Flats in the 2011 promotion does not apply in this docket. Last year, the Postal Service explained that excluding Standard Mail Flats would effectively exclude Carrier Route because of the way mailers entered them on the postage statement. *See* Order No. 731, p. 4. However, in the current docket, in response to ChIR No. 1, q. 2, the Postal Service admitted that design of the postage statement would effectively exclude Carrier Route.

In this docket, the Postal Service states that it "believes that the exclusion of Standard Mail Flats from the promotion would be counterproductive and would harm the long-range goals of the initiative." ChIR No. 1, q. 1. However, the long-range goals will still be accomplished by application of the discount for the profitable products. The Postal Service further states that removing Standard Flats would create "added uncertainty surrounding the ultimate cost of a mailing," but does not explain how removing Standard Flats would actually add to already existing uncertainty considering that the Commission's decision in this docket will be issued far in advance of the promotion.

On November 25, 2011, the Postal Service's report on the results from last year's mobile barcode discount, for Docket No. R2011-5, was filed, showing that it provided discounts for Standard Mail Flats of \$4.707 million.¹ Although this is less than 1 percent of

¹ <http://www.prc.gov/Docs/78/78062/2011%20Mobile%20Barcode%20DCR.pdf>

the overall loss for that product for last year, important principles are involved. Almost \$5 million for a near-insolvent company is not insignificant.

Finally, the Postal Service (twice) stated that “the Postal Service’s compliance with the ACD provisions relating to Standard Mail Flats was stayed pending the resolution of the Postal Service’s petition for review.” Notice, p. 7. *See also* Response to ChIR No. 1, q. 4. This clear misstatement of the scope of the stay requested and granted was addressed in the last market-dominant price adjustment:

Specifically, the Commission did not require the Postal Service to file a schedule of future above-average increases for the Standard Mail Flats product, pending the outcome of the pending appeal. However, the Commission did **not release** the Postal Service from its obligation to propose **prices** that move the Standard Mail Flats product toward compliance. [Docket No. R2012-3, Order No. 987, p. 32 (emphasis added).]

Nevertheless, the Commission accepted the 2.209 percent price increase for Flats in that docket because it “technically complied with the Commission’s directive to give ... an above-average increase.” However, given that the Docket No. R2012-3 price increase for Flats was only 0.076 percent above the average, providing the discount in this docket could put that product out of technical compliance with the FY 2010 ACD directive.

CONCLUSION

Overall, Valpak supports the Postal Service’s 2012 mobile barcode discount promotion. However, the reasons for including Standard Flats in the program are not persuasive, and the Commission should not allow the Postal Service to deliberately increase the subsidy paid by other Standard Mailers by allowing Standard Flats to be included in the 2012 mobile barcode discount.

Respectfully submitted,

William J. Olson
John S. Miles
Jeremiah L. Morgan
WILLIAM J. OLSON, P.C.
370 Maple Avenue West, Suite 4
Vienna, Virginia 22180-5615
(703) 356-5070

Counsel for:
Valpak Direct Marketing Systems, Inc. and
Valpak Dealers' Association, Inc.